IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18069 of 2004

Between:

M/s. S.G.E.M. Works rep by Proprietor, B. Bapu Reddy S/o Krishna Reddy, R/o Pongal Road Nalgonda District

..... PETITIONER

AND

The Executive Engineer, Nagarjuna Sagar Left Canals O&M Division, Miryalaguda, Nalgonda District

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ or order or direction more particularly one in the nature of Writ of Mandmaus declaring that the action of the respondent herein in imposing the special condition No.2 in short term notice No. 1/2004-05 dated 29-9-2004 of the respondent by asking experience to participate in the contract is bad, arbitrary unjust and contrary to the time to time G.O.Ms./Rules by setting a side the same and consequently direct the respondents to entertain the petitioner quotation schedule by receiving the same

Counsel for the Petitioner: MR.P.VENKATESWAR RAO

Counsel for the Respondent: GP FOR IRRIGATION & COMM AREA DEV.

The Court at the stage of admission made the following Order:

This writ petition is filed seeking a declaration that the action of the respondent in imposing the Special Condition No.2 in short tender notice dated 29-09-2004, as illegal and arbitrary.

The impugned tender notice was issued by the respondent herein inviting applications for the maintenance work of Nagarjuna Sagar left Canal under A.P.E.R.P. Funds under National Shopping Procedure, for the works specified there under. As per the tender schedule, quotation schedule will be available up to 06-10-2004 and last date for receiving the tender schedule was fixed as 07-10-2004 and the date for opening the bids was fixed as 08-10-2004.

The only contention raised by the petitioner before this Court is that the Condition No.2 of the tender schedule, where under, the bids were invited only from those persons, who have executed the work of manufacture of casual shutters to the value of not less than Rs. 5,00,000/- during the last three years, is in conflict with Clause 12 of G.O.Ms.No.94 I&CAD, dated 01-07-2003, and therefore the same being illegal, the compliance of the said clause cannot be insisted upon.

This Court while ordering notice to the respondent initially by order dated 06-10-2004, granted interim orders directing that the tender schedule be issued to the petitioner and the same shall be received subject to further orders in the writ petition.

Subsequently, a counter-affidavit has been filed on behalf of the respondent, in which, it is stated that the impugned tender notice was issued basing on the funds allotted by the Chief Engineer, Nagarjuna Sagar Project, Camp Office, Hyderabad vide proceedings dated 13-09-2004 charging the expenditure under A.P.E.R.P. to the N.S.P. during the year 2004-2005 under MH.2701 M&MI-1-MI Commercial-MH.101 NSP-GH-03-Externally Aided Projects. It is further stated that G.O.Ms.No.94 I&CAD Dept., dated 01-07-2003 and G.O.Ms.No.23 I&CAD Dept., dated 05-03-1999

are not applicable for the present bids and G.O.Ms.No.64 I&CAD Dept., dated 02-05-1998 is applicable, which says that the Irrigation Department shall take up the works according to the procedure prescribed by the World Bank under National Shopping Procedure for the works valued less than Rs.12,00,000/-. It is also stated that the petitioner has never approached the respondent nor submitted any application in the office for issue of tender schedules in pursuance of the tender notification.

I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondent.

The law is well settled that the tender conditions cannot normally be subjected to judicial scrutiny unless they are so arbitrary or irrational or *ex facie* in contravention of any statutory provision or in violation of Article 14 of the Constitution of India. It is also a well settled principle that the State or its instrumentalities can choose their own terms of invitation to tender and when such terms do not suffer from the vice of arbitrariness, this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, will not sit in appeal and substitute its own opinion.

In the case on hand, the only contention raised by the petitioner is that Condition No.2 of the impugned tender notice is not in conformity with Clause No.12 of G.O.Ms.No.94 I&CAD Dept., dated 01-07-2003. However, the said allegation has been denied by the respondent stating that since the works in question relate to the manufacture of the shutters in N.S.L.C. command through National Shopping Procedure of World Bank norms, G.O.Ms.No.94 I&CAD Dept., dated 01-07-2003 is not attracted. On the other hand, the case of the respondent is that the guidelines under G.O.Ms.No.64 I&CAD Dept., dated 2-5-1998 are applicable.

As a matter of fact, in the impugned tender notice itself, it is specifically mentioned that the works are taken up with the funds of APERP and bids are invited from the firms/engineering workshops recognized under National Shopping Procedure. It is also not in dispute that as per the eligibility criteria prescribed under G.O.Ms.No.64, the tenderer, as a prime contractor, should have satisfactorily completed similar work of value not less than Rs.5,00,000/- in the last three years and the said clause has been incorporated in the impugned notice. There is absolutely no allegation that by prescribing the said specification, the petitioner was deliberately eliminated from participating in the tender process and particularly in the absence of allegation of any mala fides, I do not find any justifiable reason to

interfere with the tender process and to grant the relief as prayed for.

In the circumstances, the writ petition is devoid of merits and it is accordingly dismissed. It is needless to mention that the impugned order granted on 06-10-2004 shall stand vacated. No costs.

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14-10-2004

kdl

To

1 The Executive Engineer, Nagarjuna Sagar Left Canals O&M Division,

Miryalaguda, Nalgonda District

2 Two C.Cs. to the GP for Irrigation & Comm. Area Dev., High Court Buildings, A.P., Hyderabad, (OUT).

3 Two C.D. Copies.